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10 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**  
12

13 In the Matter of the Accusation Against:

14 MATTHEW DAVID COLE, M.D.

15 369 San Miguel Drive, Suite 200  
16 Newport Beach California 92660-7818

17 Physician's and Surgeon's Certificate A 98152,  
18 Respondent.  
19  
20

Case No. 800-2015-019100

OAH No. 2019020196

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

21 **IT IS HEREBY STIPULATED AND AGREED** by and between the parties to the above-  
22 entitled proceedings that the following matters are true:

23 **PARTIES**

24 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
25 of California (Board). She brought this action solely in her official capacity and is represented in  
26 this matter by Xavier Becerra, Attorney General of the State of California, by Chris Leong,  
27 Deputy Attorney General.

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2. Respondent Matthew David Cole, M.D. (Respondent) is represented in this proceeding by attorney Michael J. Khouri, of 24012 Calle de la Plata, Suite 210, Laguna Hills, California 92653.

3. On November 29, 2006, the Board issued Physician's and Surgeon's Certificate No. A 98152 to Respondent. That license was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2015-019100, and will expire on March 31, 2020, unless renewed.

## JURISDICTION

4. Accusation No. 800-2015-019100 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on December 6, 2018. Respondent filed a timely Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 800-2015-019100 is attached as Exhibit A and is incorporated herein by reference.

## ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 800-2015-019100. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 14. The parties understand and agree that Portable Document Format (PDF) and facsimile  
2 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
3 signatures thereto, shall have the same force and effect as the originals.

4 15. In consideration of the foregoing admissions and stipulations, the parties agree that  
5 the Board may, without further notice or formal proceeding, issue and enter the following  
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 **IT IS HEREBY ORDERED THAT** Physician's and Surgeon's Certificate No. A 98152  
9 issued to Respondent Matthew David Cole, M.D. is revoked. However, the revocation is stayed  
10 and Respondent is placed on probation for six (6) years on the following terms and conditions.

11 1. **ACTUAL SUSPENSION.** As part of probation, Respondent is suspended from the  
12 practice of medicine for 30 days beginning the sixteenth (16th) day after the effective date of this  
13 decision.

14 2. **CONTROLLED SUBSTANCES - PARTIAL RESTRICTION.** Respondent shall not  
15 order, prescribe, dispense, administer, furnish, or possess any controlled substances as defined by  
16 the California Uniform Controlled Substances Act, except for those drugs listed in Schedules IV  
17 and V of the Act, during the first year of probation.

18 Respondent shall not issue an oral or written recommendation or approval to a patient or a  
19 patient's primary caregiver for the possession or cultivation of marijuana for the personal medical  
20 purposes of the patient within the meaning of Health and Safety Code section 11362.5. If  
21 Respondent forms the medical opinion, after an appropriate prior examination and medical  
22 indication, that a patient's medical condition may benefit from the use of marijuana, Respondent  
23 shall so inform the patient and shall refer the patient to another physician who, following an  
24 appropriate prior examination and medical indication, may independently issue a medically  
25 appropriate recommendation or approval for the possession or cultivation of marijuana for the  
26 personal medical purposes of the patient within the meaning of Health and Safety Code section  
27 11362.5. In addition, Respondent shall inform the patient or the patient's primary caregiver that  
28 Respondent is prohibited from issuing a recommendation or approval for the possession or

1 cultivation of marijuana for the personal medical purposes of the patient and that the patient or  
2 the patient's primary caregiver may not rely on Respondent's statements to legally possess or  
3 cultivate marijuana for the personal medical purposes of the patient. Respondent shall fully  
4 document in the patient's chart that the patient or the patient's primary caregiver was so  
5 informed. Nothing in this condition prohibits Respondent from providing the patient or the  
6 patient's primary caregiver information about the possible medical benefits resulting from the use  
7 of marijuana.

8 Respondent shall immediately surrender Respondent's current DEA permit to the Drug  
9 Enforcement Administration for cancellation and reapply for a new DEA permit limited to those  
10 Schedules authorized by this order. Within 15 calendar days after the effective date of this  
11 Decision, Respondent shall submit proof that Respondent has surrendered Respondent's DEA  
12 permit to the Drug Enforcement Administration for cancellation and re-issuance. Within 15  
13 calendar days after the effective date of issuance of a new DEA permit, Respondent shall submit a  
14 true copy of the permit to the Board or its designee.

15 3. CONTROLLED SUBSTANCES - MAINTAIN RECORDS AND ACCESS TO  
16 RECORDS AND INVENTORIES. Respondent shall maintain a record of all controlled  
17 substances ordered, prescribed, dispensed, administered, or possessed by Respondent, and any  
18 recommendation or approval which enables a patient or patient's primary caregiver to possess or  
19 cultivate marijuana for the personal medical purposes of the patient within the meaning of Health  
20 and Safety Code section 11362.5, during probation, showing all of the following: 1) the name and  
21 address of the patient; 2) the date; 3) the character and quantity of controlled substances involved;  
22 and 4) the indications and diagnosis for which the controlled substances were furnished.

23 Respondent shall keep these records in a separate file or ledger, in chronological order. All  
24 records and any inventories of controlled substances shall be available for immediate inspection  
25 and copying on the premises by the Board or its designee at all times during business hours and  
26 shall be retained for the entire term of probation.

27 4. CONTROLLED SUBSTANCES - ABSTAIN FROM USE. Respondent shall abstain  
28 completely from the personal use or possession of controlled substances as defined in the

1 California Uniform Controlled Substances Act, dangerous drugs as defined by Business and  
2 Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not  
3 apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide  
4 illness or condition.

5 Within 15 calendar days of receiving any lawfully prescribed medications, Respondent  
6 shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone  
7 number; medication name, strength, and quantity; and issuing pharmacy name, address, and  
8 telephone number.

9 5. COMMUNITY SERVICE - FREE SERVICES. Within 60 calendar days of the  
10 effective date of this Decision, Respondent shall submit to the Board or its designee for prior  
11 approval a community service plan in which Respondent shall provide fifty (50) hours of free  
12 medical services to a community or non-profit organization. This community service shall be for  
13 the first 3 years of probation.

14 Prior to engaging in any community service, Respondent shall provide a true copy of the  
15 Decision(s) to the chief of staff, director, office manager, program manager, officer, or the chief  
16 executive officer at every community or non-profit organization where Respondent provides  
17 community service and shall submit proof of compliance to the Board or its designee within 15  
18 calendar days. This condition shall also apply to any change(s) in community service.

19 Community service performed prior to the effective date of the Decision shall not be  
20 accepted in fulfillment of this condition.

21 6. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective  
22 date of this Decision, Respondent shall enroll in a course in prescribing practices approved in  
23 advance by the Board or its designee. Respondent shall provide the approved course provider  
24 with any information and documents that the approved course provider may deem pertinent.  
25 Respondent shall participate in and successfully complete the classroom component of the course  
26 not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully  
27 complete any other component of the course within one (1) year of enrollment. The prescribing  
28 practices course shall be at Respondent's expense and shall be in addition to the Continuing

1 Medical Education (CME) requirements for renewal of licensure.

2 A prescribing practices course taken after the acts that gave rise to the charges in the  
3 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
4 or its designee, be accepted towards the fulfillment of this condition if the course would have  
5 been approved by the Board or its designee had the course been taken after the effective date of  
6 this Decision.

7 Respondent shall submit a certification of successful completion to the Board or its  
8 designee not later than 15 calendar days after successfully completing the course, or not later than  
9 15 calendar days after the effective date of the Decision, whichever is later.

10 7. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of  
11 the effective date of this Decision, Respondent shall enroll in a professionalism program, that  
12 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.1.  
13 Respondent shall participate in and successfully complete that program. Respondent shall  
14 provide any information and documents that the program may deem pertinent. Respondent shall  
15 successfully complete the classroom component of the program not later than six (6) months after  
16 Respondent's initial enrollment, and the longitudinal component of the program not later than the  
17 time specified by the program, but no later than one (1) year after attending the classroom  
18 component. The professionalism program shall be at Respondent's expense and shall be in  
19 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

20 A professionalism program taken after the acts that gave rise to the charges in the  
21 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
22 or its designee, be accepted towards the fulfillment of this condition if the program would have  
23 been approved by the Board or its designee had the program been taken after the effective date of  
24 this Decision.

25 Respondent shall submit a certification of successful completion to the Board or its  
26 designee not later than 15 calendar days after successfully completing the program or not later  
27 than 15 calendar days after the effective date of the Decision, whichever is later.

28 8. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective date of



1 this Decision, and on whatever periodic basis thereafter may be required by the Board or its  
2 designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological  
3 testing, if deemed necessary) by a Board-appointed board certified psychiatrist, who shall  
4 consider any information provided by the Board or designee and any other information the  
5 psychiatrist deems relevant, and shall furnish a written evaluation report to the Board or its  
6 designee. Psychiatric evaluations conducted prior to the effective date of the Decision shall not  
7 be accepted towards the fulfillment of this requirement. Respondent shall pay the cost of all  
8 psychiatric evaluations and psychological testing.

9 Respondent shall comply with all restrictions or conditions recommended by the evaluating  
10 psychiatrist within 15 calendar days after being notified by the Board or its designee.

11 9. PSYCHOTHERAPY. If the psychiatric evaluation recommends psychotherapy, it  
12 shall begin within 60 calendar days of the Respondent's notification of the recommendation.  
13 Respondent shall submit to the Board or its designee for prior approval the name and  
14 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who  
15 has a doctoral degree in psychology and at least five years of postgraduate experience in the  
16 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall  
17 undergo and continue psychotherapy treatment, including any modifications to the frequency of  
18 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

19 The psychotherapist shall consider any information provided by the Board or its designee  
20 and any other information the psychotherapist deems relevant and shall furnish a written  
21 evaluation report to the Board or its designee. Respondent shall cooperate in providing the  
22 psychotherapist with any information and documents that the psychotherapist may deem  
23 pertinent.

24 Respondent shall have the treating psychotherapist submit quarterly status reports to the  
25 Board or its designee. The Board or its designee may require Respondent to undergo psychiatric  
26 evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of  
27 probation, Respondent is found to be mentally unfit to resume the practice of medicine without  
28 restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the

1 period of probation shall be extended until the Board determines that Respondent is mentally fit  
2 to resume the practice of medicine without restrictions.

3 Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

4 10. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the  
5 effective date of this Decision, and on a periodic basis thereafter as may be required by the Board  
6 or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician  
7 who shall consider any information provided by the Board or designee and any other information  
8 the evaluating physician deems relevant and shall furnish a medical report to the Board or its  
9 designee. Respondent shall provide the evaluating physician with any information and  
10 documentation that the evaluating physician may deem pertinent.

11 Following the evaluation, Respondent shall comply with all restrictions or conditions  
12 recommended by the evaluating physician within 15 calendar days after being notified by the  
13 Board or its designee. If Respondent is required by the Board or its designee to undergo medical  
14 treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the  
15 Board or its designee for prior approval the name and qualifications of a California licensed  
16 treating physician of Respondent's choice. Upon approval of the treating physician, Respondent  
17 shall within 15 calendar days undertake medical treatment and shall continue such treatment until  
18 further notice from the Board or its designee.

19 The treating physician shall consider any information provided by the Board or its designee  
20 or any other information the treating physician may deem pertinent prior to commencement of  
21 treatment. Respondent shall have the treating physician submit quarterly reports to the Board or  
22 its designee indicating whether or not the Respondent is capable of practicing medicine safely.  
23 Respondent shall provide the Board or its designee with any and all medical records pertaining to  
24 treatment that the Board or its designee deems necessary.

25 If, prior to the completion of probation, Respondent is found to be physically incapable of  
26 resuming the practice of medicine without restrictions, the Board shall retain continuing  
27 jurisdiction over Respondent's license and the period of probation shall be extended until the  
28 Board determines that Respondent is physically capable of resuming the practice of medicine

1 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

2 11. PROHIBITED PRACTICE. During probation, Respondent is prohibited from  
3 practicing in the area of pain management and addiction medicine. After the effective date of this  
4 Decision, all patients being treated by the Respondent shall be notified that the Respondent is  
5 prohibited from practicing in the area of pain management and addiction medicine. Any new  
6 patients must be provided this notification at the time of their initial appointment.

7 Respondent shall maintain a log of all patients to whom the required oral notification was  
8 made. The log shall contain the: 1) patient's name, address and phone number; 2) patient's  
9 medical record number, if available; 3) the full name of the person making the notification; 4) the  
10 date the notification was made; and 5) a description of the notification given. Respondent shall  
11 keep this log in a separate file or ledger, in chronological order, shall make the log available for  
12 immediate inspection and copying on the premises at all times during business hours by the Board  
13 or its designee, and shall retain the log for the entire term of probation.

14 12. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)  
15 days of the effective date of this Decision, Respondent shall provide to the Board the names,  
16 physical addresses, mailing addresses, and telephone numbers of any and all employers and  
17 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's  
18 worksite monitor, and Respondent's employers and supervisors to communicate regarding  
19 Respondent's work status, performance, and monitoring.

20 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or  
21 Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff  
22 privileges.

23 13. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to  
24 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.  
25 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair  
26 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall  
27 make daily contact with the Board or its designee to determine whether biological fluid testing is  
28 required. Respondent shall be tested on the date of the notification as directed by the Board or its

1 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at  
2 any time, including weekends and holidays. Except when testing on a specific date as ordered by  
3 the Board or its designee, the scheduling of biological fluid testing shall be done on a random  
4 basis. The cost of biological fluid testing shall be borne by the Respondent.

5 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.  
6 During the second year of probation and for the duration of the probationary term, up to five (5)  
7 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no  
8 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing  
9 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number  
10 of random tests to the first-year level of frequency for any reason.

11 Prior to practicing medicine, Respondent shall contract with a laboratory or service,  
12 approved in advance by the Board or its designee, that will conduct random, unannounced,  
13 observed, biological fluid testing and meets all of the following standards:

14 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry  
15 Association or have completed the training required to serve as a collector for the United  
16 States Department of Transportation.

17 (b) Its specimen collectors conform to the current United States Department of  
18 Transportation Specimen Collection Guidelines.

19 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published  
20 by the United States Department of Transportation without regard to the type of test  
21 administered.

22 (d) Its specimen collectors observe the collection of testing specimens.

23 (e) Its laboratories are certified and accredited by the United States Department of Health  
24 and Human Services.

25 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day  
26 of receipt and all specimens collected shall be handled pursuant to chain of custody  
27 procedures. The laboratory shall process and analyze the specimens and provide legally  
28 defensible test results to the Board within seven (7) business days of receipt of the

specimen. The Board will be notified of non-negative results within one (1) business day and will be notified of negative test results within seven (7) business days.

(g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test Respondent on any day of the week.

(h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.

(i) It maintains testing sites located throughout California.

(j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows the Respondent to check in daily for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if the Respondent holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one (1) business day and negative test results within seven (7) business days of the results becoming available. Respondent shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and Respondent.

If a biological fluid test result indicates Respondent has used, consumed, ingested, or administered to himself or herself a prohibited substance, the Board shall order Respondent to

1. cease practice and instruct Respondent to leave any place of work where Respondent is practicing  
2. medicine or providing medical services. The Board shall immediately notify all of Respondent's  
3. employers, supervisors and work monitors, if any, that Respondent may not practice medicine or  
4. provide medical services while the cease-practice order is in effect.

5. A biological fluid test will not be considered negative if a positive result is obtained while  
6. practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited  
7. substance use exists, the Board shall lift the cease-practice order within one (1) business day.

8. After the issuance of a cease-practice order, the Board shall determine whether the positive  
9. biological fluid test is in fact evidence of prohibited substance use by consulting with the  
10. specimen collector and the laboratory, communicating with the licensee, his or her treating  
11. physician(s), other health care provider, or group facilitator, as applicable.

12. For purposes of this condition, the terms "biological fluid testing" and "testing" mean the  
13. acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

14. For purposes of this condition, the term "prohibited substance" means an illegal drug, a  
15. lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by  
16. Respondent and approved by the Board, alcohol, or any other substance the Respondent has been  
17. instructed by the Board not to use, consume, ingest, or administer to himself or herself.

18. If the Board confirms that a positive biological fluid test is evidence of use of a prohibited  
19. substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the  
20. Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to  
21. any other terms or conditions the Board determines are necessary for public protection or to  
22. enhance Respondent's rehabilitation.

23. 14. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of  
24. the effective date of this Decision, Respondent shall submit to the Board or its designee, for its  
25. prior approval, the name of a substance abuse support group which he or she shall attend for the  
26. duration of probation. Respondent shall attend substance abuse support group meetings at least  
27. once per week, or as ordered by the Board or its designee. Respondent shall pay all substance  
28. abuse support group meeting costs.

1 The facilitator of the substance abuse support group meeting shall have a minimum of three  
2 (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed  
3 or certified by the state or nationally certified organizations. The facilitator shall not have a  
4 current or former financial, personal, or business relationship with Respondent within the last five  
5 (5) years. Respondent's previous participation in a substance abuse group support meeting led by  
6 the same facilitator does not constitute a prohibited current or former financial, personal, or  
7 business relationship.

8 The facilitator shall provide a signed document to the Board or its designee showing  
9 Respondent's name, the group name, the date and location of the meeting, Respondent's  
10 attendance, and Respondent's level of participation and progress. The facilitator shall report any  
11 unexcused absence by Respondent from any substance abuse support group meeting to the Board,  
12 or its designee, within twenty-four (24) hours of the unexcused absence.

13 15. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty  
14 (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or  
15 its designee for prior approval as a worksite monitor, the name and qualifications of one or more  
16 licensed physician and surgeon, other licensed health care professional if no physician and  
17 surgeon is available, or, as approved by the Board or its designee, a person in a position of  
18 authority who is capable of monitoring the Respondent at work.

19 The worksite monitor shall not have a current or former financial, personal, or familial  
20 relationship with Respondent, or any other relationship that could reasonably be expected to  
21 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its  
22 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite  
23 monitor, this requirement may be waived by the Board or its designee, however, under no  
24 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

25 The worksite monitor shall have an active unrestricted license with no disciplinary action  
26 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms  
27 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth  
28 by the Board or its designee.

1 Respondent shall pay all worksite monitoring costs.

2 The worksite monitor shall have face-to-face contact with Respondent in the work  
3 environment on as frequent a basis as determined by the Board or its designee, but not less than  
4 once per week; interview other staff in the office regarding Respondent's behavior, if requested  
5 by the Board or its designee; and review Respondent's work attendance.

6 The worksite monitor shall verbally report any suspected substance abuse to the Board and  
7 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected  
8 substance abuse does not occur during the Board's normal business hours, the verbal report shall  
9 be made to the Board or its designee within one (1) hour of the next business day. A written  
10 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and  
11 any other information deemed important by the worksite monitor shall be submitted to the Board  
12 or its designee within 48 hours of the occurrence.

13 The worksite monitor shall complete and submit a written report monthly or as directed by  
14 the Board or its designee which shall include the following: (1) Respondent's name and  
15 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)  
16 the worksite monitor's license number, if applicable; (4) the location or location(s) of the  
17 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the  
18 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;  
19 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can  
20 lead to suspected substance abuse by Respondent. Respondent shall complete any required  
21 consent forms and execute agreements with the approved worksite monitor and the Board, or its  
22 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

23 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)  
24 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior  
25 approval, the name and qualifications of a replacement monitor who will be assuming that  
26 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a  
27 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the  
28 monitor, Respondent shall receive a notification from the Board or its designee to cease the



1 practice of medicine within three (3) calendar days after being so notified. Respondent shall  
2 cease the practice of medicine until a replacement monitor is approved and assumes monitoring  
3 responsibility.

4 16. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING  
5 LICENSEES. Failure to fully comply with any term or condition of probation is a violation of  
6 probation.

7 A. If Respondent commits a major violation of probation as defined by section  
8 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board  
9 shall take one or more of the following actions:

10 (1) Issue an immediate cease-practice order and order Respondent to undergo a  
11 clinical diagnostic evaluation to be conducted in accordance with section 1361.5,  
12 subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's  
13 expense. The cease-practice order issued by the Board or its designee shall state that  
14 Respondent must test negative for at least a month of continuous biological fluid testing  
15 before being allowed to resume practice. For purposes of determining the length of time a  
16 Respondent must test negative while undergoing continuous biological fluid testing  
17 following issuance of a cease-practice order, a month is defined as thirty calendar (30) days.  
18 Respondent may not resume the practice of medicine until notified in writing by the Board  
19 or its designee that he or she may do so.

20 (2) Increase the frequency of biological fluid testing.

21 (3) Refer Respondent for further disciplinary action, such as suspension,  
22 revocation, or other action as determined by the Board or its designee.

23 B. If Respondent commits a minor violation of probation as defined by section  
24 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take  
25 one or more of the following actions:

26 (1) Issue a cease-practice order;

27 (2) Order practice limitations;

28 (3) Order or increase supervision of Respondent;

- 1 (4) Order increased documentation;
- 2 (5) Issue a citation and fine, or a warning letter;
- 3 (6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted
- 4 in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of
- 5 Regulations, at Respondent's expense;
- 6 (7) Take any other action as determined by the Board or its designee.

7 C. Nothing in this Decision shall be considered a limitation on the Board's authority

8 to revoke Respondent's probation if he or she has violated any term or condition of probation. If

9 Respondent violates probation in any respect, the Board, after giving Respondent notice and the

10 opportunity to be heard, may revoke probation and carry out the disciplinary order that was

11 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed

12 against Respondent during probation, the Board shall have continuing jurisdiction until the matter

13 is final, and the period of probation shall be extended until the matter is final.

14 17. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the

15 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the

16 Chief Executive Officer at every hospital where privileges or membership are extended to

17 Respondent, at any other facility where Respondent engages in the practice of medicine,

18 including all physician and locum tenens registries or other similar agencies, and to the Chief

19 Executive Officer at every insurance carrier which extends malpractice insurance coverage to

20 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15

21 calendar days.

22 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

23 18. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE

24 NURSES. During probation, Respondent is prohibited from supervising physician assistants and

25 advanced practice nurses.

26 19. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules

27 governing the practice of medicine in California and remain in full compliance with any court

28 ordered criminal probation, payments, and other orders.

1       20. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
2 under penalty of perjury on forms provided by the Board, stating whether there has been  
3 compliance with all the conditions of probation.

4       Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
5 of the preceding quarter.

6       21. GENERAL PROBATION REQUIREMENTS.

7       Compliance with Probation Unit

8       Respondent shall comply with the Board's probation unit.

9       Address Changes

10       Respondent shall, at all times, keep the Board informed of Respondent's business and  
11 residence addresses, email address (if available), and telephone number. Changes of such  
12 addresses shall be immediately communicated in writing to the Board or its designee. Under no  
13 circumstances shall a post office box serve as an address of record, except as allowed by Business  
14 and Professions Code section 2021(b).

15       Place of Practice

16       Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
17 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
18 facility.

19       License Renewal

20       Respondent shall maintain a current and renewed California physician's and surgeon's  
21 license.

22       Travel or Residence Outside California

23       Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
24 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty  
25 (30) calendar days.

26       In the event Respondent should leave the State of California to reside or to practice  
27 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of  
28 departure and return.

1       22. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
2 available in person upon request for interviews either at Respondent's place of business or at the  
3 probation unit office, with or without prior notice throughout the term of probation.

4       23. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
5 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
6 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
7 defined as any period of time Respondent is not practicing medicine as defined in Business and  
8 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct  
9 patient care, clinical activity or teaching, or other activity as approved by the Board. If  
10 Respondent resides in California and is considered to be in non-practice, Respondent shall  
11 comply with all terms and conditions of probation. All time spent in an intensive training  
12 program which has been approved by the Board or its designee shall not be considered non-  
13 practice and does not relieve Respondent from complying with all the terms and conditions of  
14 probation. Practicing medicine in another state of the United States or Federal jurisdiction while  
15 on probation with the medical licensing authority of that state or jurisdiction shall not be  
16 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
17 period of non-practice.

18       In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
19 months, Respondent shall successfully complete the Federation of State Medical Boards' Special  
20 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
21 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model  
22 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

23       Respondent's period of non-practice while on probation shall not exceed two (2) years.

24       Periods of non-practice will not apply to the reduction of the probationary term.

25       Periods of non-practice for a Respondent residing outside of California will relieve  
26 Respondent of the responsibility to comply with the probationary terms and conditions with the  
27 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
28 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or

1 Controlled Substances; and Biological Fluid Testing.

2 24. COMPLETION OF PROBATION. Respondent shall comply with all financial  
3 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
4 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
5 be fully restored.

6 25. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
7 of probation is a violation of probation. If Respondent violates probation in any respect, the  
8 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
9 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,  
10 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
11 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
12 the matter is final.

13 26. LICENSE SURRENDER. Following the effective date of this Decision, if  
14 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
15 the terms and conditions of probation, Respondent may request to surrender his or her license.  
16 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
17 determining whether or not to grant the request, or to take any other action deemed appropriate  
18 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
19 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
20 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
21 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
22 application shall be treated as a petition for reinstatement of a revoked certificate.

23 27. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
24 with probation monitoring each and every year of probation, as designated by the Board, which  
25 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of  
26 California and delivered to the Board or its designee no later than January 31 of each calendar  
27 year.

28 ///

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
3 discussed it with my attorney, Michael J. Khouri. I understand the stipulation and the effect it  
4 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and  
5 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
6 Decision and Order of the Medical Board of California.

7  
8 DATED: 6/3/19

Matthew David Cole  
MATTHEW DAVID COLE, M.D.  
Respondent

10 I have read and fully discussed with Respondent Matthew David Cole, M.D. the terms and  
11 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.  
12 I approve its form and content.

13  
14 DATED: 6/3/19

Michael J. Khouri  
MICHAEL J. KHOURI  
Attorney for Respondent

16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
18 submitted for consideration by the Medical Board of California.

19  
20 Dated: June 4, 2019.

Respectfully submitted,

21 XAVIER BECERRA  
Attorney General of California  
22 ROBERT MCKIM BELL  
Supervising Deputy Attorney General

23 Chris Leong  
24 CHRIS LEONG  
25 Deputy Attorney General  
26 Attorneys for Complainant

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**Exhibit A**

**Accusation No. 800-2015-019100**

XAVIER BECERRA  
Attorney General of California  
ROBERT MCKIM BELL  
Supervising Deputy Attorney General  
CHRIS LEONG  
Deputy Attorney General  
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*Attorneys for Complainant*

**FILED**  
**STATE OF CALIFORNIA**  
**MEDICAL BOARD OF CALIFORNIA**  
**SACRAMENTO** *Dec. 6* **2018**  
**BY** *[Signature]* **ANALYST**

**BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 800-2015-019100

MATTHEW DAVID COLE, M.D.

**A C C U S A T I O N**

369 San Miguel Drive, Suite 200  
Newport Beach, California 92660-7818

Physician's and Surgeon's Certificate  
No. A 98152,

Respondent.

Complainant alleges:

**PARTIES**

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California (Board).

2. On November 29, 2006, the Medical Board issued Physician's and Surgeon's Certificate Number A 98152 to Matthew David Cole, M.D. (Respondent). That license was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2020, unless renewed.

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**JURISDICTION**

3. This Accusation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2227 of the Code states:

“(a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the board, may, in accordance with the provisions of this chapter:

“(1) Have his or her license revoked upon order of the board.

“(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the board.

“(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the board.

“(4) Be publicly reprimanded by the board. The public reprimand may include a requirement that the licensee complete relevant educational courses approved by the board.

“(5) Have any other action taken in relation to discipline as part of an order of probation, as the board or an administrative law judge may deem proper.

“(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the board and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.”

5. Section 2234 of the Code, states:

“The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

///

1       “(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the  
2 violation of, or conspiring to violate any provision of this chapter.

3       ...

4       “(e) The commission of any act involving dishonesty or corruption which is substantially  
5 related to the qualifications, functions, or duties of a physician and surgeon.

6       ....”

7       6.     Section 2236 of the Code states:

8       “(a) The conviction of any offense substantially related to the qualifications, functions, or  
9 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this  
10 chapter. The record of conviction shall be conclusive evidence only of the fact that the conviction  
11 occurred.

12       “(b) The district attorney, city attorney, or other prosecuting agency shall notify the  
13 Medical Board of the pendency of an action against a licensee charging a felony or misdemeanor  
14 immediately upon obtaining information that the defendant is a licensee. The notice shall identify  
15 the licensee and describe the crimes charged and the facts alleged. The prosecuting agency shall  
16 also notify the clerk of the court in which the action is pending that the defendant is a licensee,  
17 and the clerk shall record prominently in the file that the defendant holds a license as a physician  
18 and surgeon.

19       “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours  
20 after the conviction, transmit a certified copy of the record of conviction to the board. The  
21 division may inquire into the circumstances surrounding the commission of a crime in order to fix  
22 the degree of discipline or to determine if the conviction is of an offense substantially related to  
23 the qualifications, functions, or duties of a physician and surgeon.

24       “(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to  
25 be a conviction within the meaning of this section and Section 2236.1. The record of conviction  
26 shall be conclusive evidence of the fact that the conviction occurred.”

27     ///

28     ///

1       7.     Section 2237 of the Code states:

2       “(a) The conviction of a charge of violating any federal statutes or regulations or any statute  
3 or regulation of this state, regulating dangerous drugs or controlled substances, constitutes  
4 unprofessional conduct. The record of the conviction is conclusive evidence of such  
5 unprofessional conduct. A plea or verdict of guilty or a conviction following a plea of nolo  
6 contendere is deemed to be a conviction within the meaning of this section.

7       “(b) Discipline may be ordered in accordance with Section 2227 or the Medical Board may  
8 order the denial of the license when the time for appeal has elapsed, or the judgment of conviction  
9 has been affirmed on appeal, or when an order granting probation is made suspending the  
10 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4  
11 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of  
12 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,  
13 information, or indictment.”

14       8.     Section 2238 of the Code states:

15       “A violation of any federal statute or federal regulation or any of the statutes or regulations  
16 of this state regulating dangerous drugs or controlled substances constitutes unprofessional  
17 conduct.”

18       9.     Section 2239 of the Code states:

19       “(a) The use or prescribing for or administering to himself or herself, of any controlled  
20 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic  
21 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to  
22 any other person or to the public, or to the extent that such use impairs the ability of the licensee  
23 to practice medicine safely or more than one misdemeanor or any felony involving the use,  
24 consumption, or self-administration of any of the substances referred to in this section, or any  
25 combination thereof, constitutes unprofessional conduct. The record of the conviction is  
26 conclusive evidence of such unprofessional conduct.

27       “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is  
28 deemed to be a conviction within the meaning of this section. The Medical Board may order

1 discipline of the licensee in accordance with Section 2227 or the Medical Board may order the  
2 denial of the license when the time for appeal has elapsed or the judgment of conviction has been  
3 affirmed on appeal or when an order granting probation is made suspending imposition of  
4 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal  
5 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,  
6 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or  
7 indictment.”

8 10. Section 2261 of the Code states:

9 “Knowingly making or signing any certificate or other document directly or indirectly  
10 related to the practice of medicine or podiatry which falsely represents the existence or  
11 nonexistence of a state of facts, constitutes unprofessional conduct.”

12 11. Section 2263 of the Code states: “The willful, unauthorized violation of professional  
13 confidence constitutes unprofessional conduct.”

14 12. Section 490 of the Code states:

15 “(a) In addition to any other action that a board is permitted to take against a licensee, a  
16 board may suspend or revoke a license on the ground that the licensee has been convicted of a  
17 crime, if the crime is substantially related to the qualifications, functions, or duties of the business  
18 or profession for which the license was issued.

19 “(b) Notwithstanding any other provision of law, a board may exercise any authority to  
20 discipline a licensee for conviction of a crime that is independent of the authority granted under  
21 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties  
22 of the business or profession for which the licensee’s license was issued.

23 “(c) A conviction within the meaning of this section means a plea or verdict of guilty or a  
24 conviction following a plea of nolo contendere. Any action that a board is permitted to take  
25 following the establishment of a conviction may be taken when the time for appeal has elapsed, or  
26 the judgment of conviction has been affirmed on appeal, or when an order granting probation is  
27 made suspending the imposition of sentence, irrespective of a subsequent order under the  
28 provisions of Section 1203.4 of the Penal Code.

1       “(d) The Legislature hereby finds and declares that the application of this section has been  
2 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th  
3 554, and that the holding in that case has placed a significant number of statutes and regulations  
4 in question, resulting in potential harm to the consumers of California from licensees who have  
5 been convicted of crimes. Therefore, the Legislature finds and declares that this section  
6 establishes an independent basis for a board to impose discipline upon a licensee, and that the  
7 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not  
8 constitute a change to, but rather are declaratory of, existing law.”

9                                   **FIRST CAUSE FOR DISCIPLINE**

10                                   **(Conviction of a Crime)**

11       13. Respondent is subject to disciplinary action under sections 2234, subdivision (a);  
12 2236, subdivision (a); and 490, in that he was convicted of a criminal offense substantially related  
13 to the qualifications, functions, or duties of a physician and surgeon. The circumstances are as  
14 follows:

15       14. On December 15, 2015, in the United States District Court, for the Southern District  
16 of California, in a proceeding entitled *United States of America v. Matthew Cole, et. al.*,” Case  
17 Number 15 CR 3074-H, an Information was filed. Respondent together with his co-conspirator  
18 were charged with Conspiracy to Acquire Controlled Substances by Fraud, Deception and  
19 Subterfuge (21 U.S.C. sections 843(a)(3), 843(d)(1) and 846).

20       15. On December 1, 2015, Respondent entered into a plea agreement. As part of that  
21 agreement, Respondent admitted that he committed each of the elements of the crime, and also  
22 admitted that there was a factual basis for this guilty plea. He acknowledged that the “following  
23 facts are true and undisputed:

24       **“Nature of the Conspiracy**

25       “1. Beginning as early as November 23, 2014, continuing up to and including March 5, 2015,  
26 within the Southern District of California, defendant Matthew Cole (“M. Cole”), a California  
27 licensed medical doctor, and co-defendant [S.C.]<sup>1</sup> agreed and conspired to knowingly acquire

28       <sup>1</sup> Name reduced to initials for privacy.

1 oxycodone (Schedule II), zolpidem tartrate (Schedule IV), and alprazolam (Schedule IV), through  
2 the use of fraudulent medical prescriptions.

3 "2. In furtherance of this conspiracy, in his capacity as a licensed medical doctor and using  
4 his assigned DEA Registration Number,<sup>2</sup> [Respondent] regularly drafted fraudulent medical  
5 prescriptions for Scheduled pharmaceutical drugs. These medical prescriptions were fraudulent in  
6 that they were not based upon a valid doctor/patient relationship. Thereafter, in an effort to  
7 acquire Scheduled pharmaceutical drugs, [Respondent and/or S.C.] would travel to various  
8 commercial pharmacies and present the fraudulent prescriptions as valid.

9 **"December 27, 2014 Acquisition of Oxycodone**

10 "3. On December 27, 2014, [Respondent and S.C.] knowingly used a fraudulent medical  
11 prescription at a CVS Pharmacy to acquire sixty 10 milligram tablets of Oxycodone, a Schedule  
12 II controlled substance.

13 "4. Specifically, [Respondent] wrote the Fraudulent Prescription in the name of K.V., using  
14 his own prescription pad with his assigned DEA Registration Number. At the time [Respondent]  
15 wrote the Fraudulent Prescription, [Respondent] knew that no doctor/patient relationship existed  
16 with K.V. K.V. was a friend of [Respondent] during [Respondent's] time at college. K.V. was  
17 never a patient of Respondent, nor did K.V. ever receive a medical prescription from  
18 [Respondent]. K.V. never gave [Respondent or S.C.] permission to use K.V.'s name on any  
19 medical prescription.

20 "5. On December 27, 2014, [Respondent] personally provided the Fraudulent Prescription to a  
21 CVS Pharmacist. At the time [Respondent] provided the Fraudulent Prescription to the CVS  
22 Pharmacist, [Respondent] knew that the Fraudulent Prescription was, in fact, fraudulent. Upon  
23 receipt of sixty 10 milligram tablets of Oxycodone (Schedule II), [Respondent] signed for the  
24 tablets in CVS Pharmacy's logbook. Thereafter, while still in the CVS Pharmacy, [S.C.] handed  
25 the aforementioned sixty 10 milligram tablets of Oxycodone to [Respondent].

26 <sup>2</sup> A DEA number or DEA Registration Number is a unique number assigned to a health  
27 care provider (such as a medical practitioner, pharmacist, dentist, or veterinarian) by the U.S.  
28 Drug Enforcement Administration (DEA) allowing them to write prescription for controlled  
substances.

**"The Creation of False Medical Records to Hide the Conspiracy"**

"6. On February 16, 2015, at his medical office, [Respondent] created a false medical file for K.V. [Respondent] used his status as a licensed medical doctor to create the false appearance of a valid doctor/patient relationship.

**"Additional Use of Fraudulent Prescriptions"**

"7. In furtherance of this conspiracy, [Respondent and S.C.] (as identified below) also knowingly and intentionally used fraudulent medical prescriptions to obtain additional quantities of Scheduled pharmaceutical drugs:"

DATE FRAUDULENT PRESCRIPTION USED	RESPONDENT PRESENT AT PHARMACY	SUMMARY OF PRESCRIPTION USE
11-23-14	Respondent	Used to acquire 60 tablets of Oxycodone (Schedule II); from Walmart Pharmacy
12-07-14	Respondent and S.C.	Used to acquire 60 tablets of Oxycodone (Schedule II); from Walmart Pharmacy
12-21-14	Respondent and S.C.	Used to acquire 60 tablets of Oxycodone (Schedule II); from Walmart Pharmacy
01-06-15	Respondent	Used to acquire 60 tablets of Oxycodone (Schedule II); from Walmart Pharmacy
02-15-15	Respondent and S.C.	Used to acquire 60 tablets of Oxycodone (Schedule II); from CVS Pharmacy
11-14-14	Respondent	Used to acquire 60 tablets of Oxycodone (Schedule II) from Rite Aid Pharmacy
01-15-15	Respondent	Used to acquire 60 tablets of Oxycodone (Scheduled II) from Rite Aid Pharmacy
01-30-15	Respondent	Used to acquire 60 tablets of Oxycodone (Scheduled II) from Rite Aid Pharmacy
10-03-14	Respondent	Used to acquire 60 tablets of Zolpidem Tartrate (Schedule IV) from CVS Pharmacy
10-03-14	Respondent	Used to acquire 30 tablets of Alprazolam (IV) from CVS Pharmacy
11-04-14	Respondent	Used to acquire 30 tablets of Zolpidem Tartrate (Schedule IV) from CVS Pharmacy

11-04-14	Respondent	Used to acquire 30 tablets of Alprazolam (IV) from CVS Pharmacy
12-04-14	Respondent	Used to acquire 30 tablets of Zolpidem Tartrate (Schedule IV) from CVS Pharmacy
12-04-14	Respondent	Used to acquire 30 tablets of Alprazolam (IV) from CVS Pharmacy
01-04-15	Respondent	Used to acquire 30 tablets of Zolpidem Tartrate (Schedule IV) from CVS Pharmacy
01-04-15	Respondent	Used to acquire 30 tablets of Alprazolam (IV) from CVS Pharmacy
02-06-15	Respondent	Used to acquire 30 tablets of Zolpidem Tartrate (Schedule IV) from CVS Pharmacy
02-06-15	Respondent	Used to acquire 30 tablets of Alprazolam (IV) from CVS Pharmacy
03-08-15	Respondent	Used to acquire 30 tablets of Zolpidem Tartrate (Schedule IV) from CVS Pharmacy
03-08-15	Respondent	Used to acquire 30 tablets of Alprazolam (IV) from CVS Pharmacy
10-21-14	Respondent	Used to acquire 60 tablets of Oxycodone (Schedule II) from Rite Aid Pharmacy
11-05-14	Respondent	Used to acquire 60 tablets of Oxycodone (Schedule II) from Rite Aid Pharmacy
11-21-14	Respondent	Used to acquire 60 tablets of Oxycodone (Schedule II) from Rite Aid Pharmacy
01-11-15	Respondent and S.C.	Used to acquire 60 tablets of Oxycodone (Schedule II) from CVS Pharmacy
01-25-15	Respondent and S.C.	Used to acquire 60 tablets of Oxycodone (Schedule II) from CVS Pharmacy
02-10-15	Respondent and S.C.	Used to acquire 60 tablets of Oxycodone (Schedule II) from CVS Pharmacy
02-21-15	Respondent	Used to acquire 30 tablets of Zolpidem Tartrate (Schedule IV) from CVS Pharmacy
02-21-15	Respondent	Used to acquire 30 tablets of Alprazolam (IV) from CVS Pharmacy
03-08-15	Respondent and S.C.	Used to acquire 60 tablets of Oxycodone (Schedule II) from Walgreens Pharmacy



01-27-15	Respondent	Used to acquire 60 tablets of Oxycodone (Schedule II) from CVS Pharmacy
02-12-15	Respondent	Used to acquire 60 tablets of Oxycodone (Schedule II) from Rite Aid Pharmacy
01-16-15	Respondent	Used to acquire 30 tablets of Zolpidem Tartrate (Schedule IV) from CVS Pharmacy
01-16-15	Respondent	Used to acquire 30 tablets of Alprazolam (IV) from CVS Pharmacy
02-18-15	Respondent	Used to acquire 30 tablets of Zolpidem Tartrate (Schedule IV) from CVS Pharmacy
02-18-15	Respondent	Used to acquire 30 tablets of Alprazolam (IV) from CVS Pharmacy
02-06-15	Respondent	Used to acquire 60 tablets of Oxycodone (Schedule II) from Savon Pharmacy
02-24-15	Respondent	Used to acquire 60 tablets of Oxycodone (Schedule II) from CVS Pharmacy
03-05-15	Respondent	Used to acquire 60 tablets of Oxycodone (Schedule II) from CVS Pharmacy

16. On April 19, 2016, a Judgment was entered. As part of that Judgment, Respondent was sentenced for time served. He was sentenced to supervised release for one year with terms and conditions.

17. On November 21, 2017, Respondent was interviewed. As part of that interview, Respondent admitted that he was addicted to oxycodone and wrote prescriptions in order to obtain oxycodone for his own use.

## **SECOND CAUSE FOR DISCIPLINE**

### **(Dishonesty)**

18. By reason of the facts set forth above in the First Cause for Discipline, Respondent is subject to disciplinary action under section 2234, subdivision (e) of the Code for dishonesty.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Excessive Use of Drugs)**

3 19. By reason of the facts set forth above in the First Cause for Discipline, Respondent is  
4 subject to disciplinary action under section 2239 of the Code for excessive use of drugs.

5 **FOURTH CAUSE FOR DISCIPLINE**

6 **(Knowing Making Medical Documents Known to be False)**

7 20. By reason of the facts set forth above in the First Cause for Discipline, Respondent is  
8 subject to disciplinary action under section 2261 of the Code for knowingly making or signing  
9 documents related to the practice of medicine which falsely represented the existence or  
10 nonexistence of a state of facts.

11 **FIFTH CAUSE FOR DISCIPLINE**

12 **(Violation of Professional Confidence)**

13 21. By reason of the facts set forth above in the First Cause for Discipline, Respondent is  
14 subject to disciplinary action under section 2263 of the Code for violation of professional  
15 confidence.

16 **SIXTH CAUSE FOR DISCIPLINE**

17 **(Conviction of Drug-Related Federal Statutes)**

18 22. By reason of the facts set forth above in the First Cause for Discipline, Respondent is  
19 subject to disciplinary action under section 2237 of the Code for conviction of drug related  
20 federal statutes.

21 **SEVENTH CAUSE FOR DISCIPLINE**

22 **(Unprofessional Conduct)**

23 23. By reason of the facts set forth above in the First Cause for Discipline, Respondent is  
24 subject to disciplinary action under sections 2234 and 2238 of the Code for unprofessional  
25 conduct.

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**PRAYER**

**WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A 98152, issued to Matthew David Cole, M.D.;
2. Revoking, suspending or denying approval of his authority to supervise physician assistants and advanced practice nurses;
3. If placed on probation, ordering him to pay the Board the costs of probation monitoring; and
4. Taking such other and further action as deemed necessary and proper.

DATED: December 6, 2018

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California

*Complainant*

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